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**MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS & CLARK COUNTY**

WILD MONTANA, and MONTANA
WILDLIFE FEDERATION,

Petitioners,

v.

GREG GIANFORTE, in his official
capacity as GOVERNOR OF THE
STATE OF MONTANA; and CHRISTI
JACOBSEN, in her official capacity as
SECRETARY OF STATE,

Respondents.

Cause No.:

**Petition for Declaratory
Judgment and Application for
Writ of Mandate**

INTRODUCTION

1. After months of deliberation, on May 1, 2023, the Montana Legislature passed Senate Bill 442 (“SB 442”) with overwhelming margins and bipartisan support. Out of 150 legislators, 130 voted to pass SB 442, which allocates marijuana tax revenue to improve wildlife habitat, public lands access, and county roads. This margin of support far exceeds the two-thirds required to override a veto.

2. The next day, on May 2, the Governor vetoed SB 442. Also on May 2, the Legislature, beginning with the Senate, voted to adjourn *sine die*. By virtue of the veto's timing, the Legislature had no opportunity to override the Governor's veto. The Senate voted to adjourn after the Governor had vetoed SB 442 but before the Governor's veto had been communicated to the full Senate. Different procedures govern the override process before and after the Legislature is in session. The Governor has refused to follow the procedure set out for post-adjournment veto overrides.
3. While the Governor has the constitutional authority to veto SB 442, he cannot veto SB 442 or any other law in a manner that interferes with the Legislature's constitutional authority to override that veto. *See* Mont. Const. art. III, § 1 ("No person . . . charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others . . .").
4. Absent judicial relief, a loophole that allows governors to prevent legislative overrides of veto-proof bills—simply by issuing the veto at a politically opportune moment—fundamentally undermines the Montana Constitution's carefully crafted system of check and balances. In future sessions, a governor could time vetoes of all veto-proof bills until one chamber adjourns *sine die*, and claim that, because the Legislature was still in session, the vetoes cannot be overridden.
5. Accordingly, Petitioners Wild Montana and Montana Wildlife Federation ("Conservation Organizations") bring this action to restore Montana's constitutional system of checks and balances and return the override power to

the Legislature. Conservation Organizations ask the Court to order: (1) the Governor to return the bill and his reasons for the veto to the Secretary of the State; and (2) the Secretary of State to poll the Legislature for override.

PARTIES

A. Petitioner Conservation Organizations: Wild Montana & the Montana Wildlife Federation

6. Founded in 1958, Petitioner Wild Montana is a grassroots conservation organization that unites and mobilizes communities to keep Montana wild. The organization strives to make a positive impact on decisions determining the management of public lands and waters across the state that sustain the well-being of Montana's people, communities, and wildlife. When the Legislature is in session, Wild Montana lobbies for pro-conservation policies that help communities benefit from public lands.
7. Petitioner Montana Wildlife Federation was founded in 1936 when hunters, anglers, and other conservationists joined landowners to address the loss of Montana's natural lands, healthy waters, and abundant wildlife. Montana Wildlife Federation has routinely engaged its staff, contractors, Board, and members in educating state lawmakers on conservation policy that adheres to the North American Model of Wildlife Management. Montana Wildlife Federation thus champions scientific wildlife management and organizes Montanans to conserve Montana's great natural resources to ensure that wildlife populations continue to rebound, habitat is restored, and access to public lands is maintained.

8. Conservation Organizations each have standing to seek mandamus in their own right because they are directly injured by the Governor’s veto of SB 442 and the Secretary’s failure to poll the Legislature. Senate Bill 442 directs marijuana tax revenue to Habitat Montana, a program of the Montana Fish, Wildlife & Parks Department (“FWP”) created in 1987 that works to conserve and restore important habitat for fish and wildlife. Habitat Montana’s state program promotes and reinforces Conservation Organizations’ respective missions and assures their effectiveness. *See generally* Decl. of Noah Marion, ¶¶ 3–9 (June 6, 2023).
9. Wild Montana is a long-time supporter of Habitat Montana and has defended and invested in the program over many legislative sessions. *Id.* ¶¶ 3–6. Its members and supporters have written thousands of public comments in support of conservation easement and fee title acquisitions completed using Habitat Montana funds. And Wild Montana has worked over the past five years to develop new and sustainable revenue sources and increase funding levels for Habitat Montana. Indeed, Wild Montana played a central role in passing both House Bill 701 in 2021 and Senate Bill 442 in 2023, which directed recreational marijuana tax revenue to Habitat Montana. Since then, Wild Montana has coordinated outreach from thousands of members and supporters, who contacted legislators and the Governor to support these bills. Habitat Montana plays a central role in Wild Montana’s state-level conservation goals. *Id.*
10. The Montana Wildlife Federation (“MWF”) has likewise supported Habitat

Montana since its inception. Decl. of Frank Szollosi, ¶¶ 3–6 (June 6, 2023). In fact, several MWF board members helped craft the legislation that established the Habitat Montana program in the 1980s. *Id.* ¶ 4. In the decades since, MWF has dedicated itself to ensuring the proper use of Habitat Montana’s resources as well as consistent, full funding for the program. *Id.* MWF was central to the lobbying efforts that resulted in the development and overwhelming passage of SB 442 this legislative session. *Id.* ¶ 10.

11. Conservation Organizations are both membership organizations with missions that align with their members’ interests. Many of Conservation Organizations’ members are Montana citizens and voters who have a direct stake in the continued constitutional functioning of Montana’s government.
12. In addition to standing in their own right, Conservation Organizations also have associational standing to seek mandamus on behalf of their members. Individual participation of members is unnecessary.
13. Conservation Organizations’ respective members are directly injured by the Governor’s veto of SB 442 and the Secretary’s failure to poll the Legislature because, as outspoken supporters and beneficiaries of Habitat Montana, they are also direct beneficiaries of SB 442. If the Court grants the requested relief and the Legislature is able to override the veto, Conservation Organizations’ members will benefit immensely from increased access to public lands, increased preservation of wild lands and waters in Montana, and increased protections for Montana’s wildlife.

14. Conservation Organizations' members also suffer injury as Montanans with an interest in the proper functioning of government. Members regularly participate in elections for state legislators and executive branch officials. When they go to the polls, they select candidates with the expectation that those candidates will have the opportunity to and will in fact perform the roles delegated to them under the Montana Constitution. When the Montana Legislature considers conservation-related bills, members participate in the legislative process by contacting legislators.
15. Further, in 2020, Montanans, including members of the Conservation Organizations, voted on a ballot initiative to legalize and tax marijuana. The initiative passed, specifically allocating 49.5% of the new tax revenue to conservation. Consistent with voters' intent, SB 442 ensures continued conservation funding.
16. The Governor's veto—coupled with the failure to implement any process for a legislative override—frustrates members' interests in a responsive and functional government. The members' implicated interests are germane to Conservation Organizations' shared goals and purposes because Conservation Organizations effect their missions through work with legislative and executive branch officials.

B. Respondents

17. Greg Gianforte is the Governor of the State of Montana. As Governor, he has the power to veto bills subject to the Legislature's power of override. Mont.

Const. art. VI, § 10. Governor Gianforte is named in his official capacity.

18. Christi Jacobsen is the Montana Secretary of State. As Secretary, she is tasked with polling the Legislature when the Governor vetoes a bill outside of the legislative session. Mont. Const. art. VI, § 10(4)(a). Secretary Jacobsen is named in her official capacity.

JURISDICTION & VENUE

19. Petitioner brings this action under the Montana Constitution. Section 27-26-102, MCA, provides this Court with jurisdiction.
20. This Court has jurisdiction to grant declaratory relief pursuant to § 27-8-201 *et seq.*, MCA, and injunctive relief pursuant to § 27-19-101 *et seq.*, MCA. The Court has jurisdiction to issue a writ of mandamus pursuant to § 27-26-102.
21. Venue is proper in Lewis & Clark County under § 25-2-126(1), MCA.

COMMON ALLEGATIONS

A. Constitutional & Statutory Framework

22. Montana’s government “originates with the people, is founded upon their will . . . only, and is instituted solely for the good of the whole.” Mont. Const. art. II, § 1. When the people delegated power to the government through the Constitution, they enacted a system of checks and balances. “The power of the government . . . is divided into three distinct branches—legislative, executive, and judicial. No person . . . charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in [the] constitution expressly directed or permitted.”

Mont. Const. art. III, § 1. Among these divisions, the Legislature has the power to make laws, Mont. Const. art. V, § 1; the Governor has the power to veto laws, Mont. Const. art. VI, § 10; and the Legislature has the power to override a Governor's veto by supermajority vote, Mont. Const. art. VI, § 10.

23. Thus, by constitutional design, the lawmaking process involves both the Legislature and the Governor, who serve as checks upon each other—although the final check lies with the Legislature. The Governor's power to veto bills is subject to override by the Legislature's supermajority vote. Mont. Const. art. VI, § 10(3) ("If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.").
24. The Constitution and implementing statutes set forth specific procedures for a veto after the legislative session. When the Governor vetoes a bill that was passed by supermajority after the legislative session, he must return the bill and the reasons for the veto to the Secretary of State, who must poll the members of the Legislature. Mont. Const. art. VI, § 10(4)(a); § 5-4-306, MCA. If two-thirds of the members of each house vote to override the veto, the bill becomes law. Mont. Const. art. VI, § 10(4)(a); § 5-4-306, MCA. And regardless of whether a bill passed by supermajority in the first instance, "the legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session." Mont. Const. art. VI, § 10(4)(b) (emphasis added); *accord* § 5-4-306(3), MCA.
25. The Constitution does not set forth a specific procedure for a veto signed during

the legislative session, providing only that “[i]f after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.” Mont. Const. art. VI, § 10(3). Consistent with this clear statement of legislative right, the implementing statute provides that a bill returned without the governor’s approval becomes law when “upon reconsideration the bill . . . pass[es] both houses by the constitutional majority.” Section 5-4-305(1)(c), MCA.

26. The Constitution and implementing statutes identify no circumstance in which the Legislature cannot consider and override a veto. Rather, they consistently provide that, in any situation, the veto power is limited by the Legislature’s power to override.
27. Beyond the constitutional and statutory framework, the Legislature is constitutionally required to “make rules for its proceedings.” Mont. Const. art. V, § 10. Consistent with this constitutional mandate, the Legislature has made rules governing its response to a veto. Rules of the Mont. Leg., Joint R. 40-220 (Jan. 2023). “When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After that reading, a member may move that the Governor’s veto be overridden.” Joint R. 40-220(1). Then, “[a] vote on the motion is determined by roll call. If two-thirds of the members present vote ‘aye’, the veto is overridden. If two-thirds of the members present do not vote ‘aye’, the veto is sustained.” Joint R. 40-220(2).
28. In the Senate Rules, “[w]hen the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.” Sen. R. 50-250(1). And

“[o]n any legislative day, a Senator may move to override the Governor’s veto by a two-thirds vote under Order of Business No. 9.” Sen. R. 50-250(2).

B. Senate Bill 442

29. In 2020, Montanans approved Ballot Initiative 190, legalizing recreational marijuana. The initiative provided for the taxation of recreational marijuana products and the distribution of tax revenue, nearly half of which was earmarked for conservation: 4.125% to the state’s nongame wildlife account; 4.125% to state parks; 4.125% to trails and recreational facilities; and 37.125% to wildlife habitat through funding for Habitat Montana.
30. Habitat Montana is Montana’s premiere habitat conservation program. It is administered by FWP, using state funds to purchase conservation easements, facilitate long-term habitat leases on private lands, and to acquire new public lands through fee title land purchases. Marion Decl. ¶ 4. Habitat Montana plays a central role in Wild Montana’s state-level conservation goals. *Id.* ¶ 5. It has increased public access to hundreds of thousands of acres of public lands and significantly expanded wildlife habitat conservation throughout the state. *Id.*
31. According to FWP’s 2019 report to the Montana State Legislature, the program has resulted in “56 Habitat Montana wildlife conservation easements covering 293,239 acres and costing approximately \$41.34 million in Habitat Montana funds. Fee title ownership purchased through the program totals 130,117 acres, costing \$48.78 million in Habitat Montana funds. Habitat Montana projects by area are 54% easements, 31% fee title, and 15% lease.” Habitat Mont., Report

to the 66th Mont. Leg., 4 (Jan. 2019).

32. Habitat Montana projects are conducted by working with willing landowners who desire to conserve and keep their land intact permanently. Once a landowner and FWP agree to terms, FWP performs an environmental analysis, and the public has an opportunity to submit comments. Both the Fish and Game Commission—made up of members appointed by the Governor and confirmed by the Senate—and the Board of Land Commissioners (“Land Board”) must then approve all purchases before they can become final.
33. Senator Mike Lang introduced SB 442 on February 21, 2023. Decl. of Sen. Mike Lang, ¶ 3 (June 6, 2023). As introduced, the bill did not include any funding for Habitat Montana, focusing primarily on providing funding to counties for construction and maintenance of roads.
34. Initially, conservation groups opposed the bill because it would reduce funding for Habitat Montana and other conservation programs. At the first hearing before the Senate Taxation Committee, a Wild Montana spokesperson testified that the bill, as introduced, would reduce Habitat Montana funding by \$30 million each biennium—an estimated 75% reduction. Marion Decl. ¶ 8.
35. Over the course of the legislative session, conservation groups worked with bill proponents, Senator Lang, and others to balance interests and ensure continued revenues for habitat preservation and access. Lang Decl. ¶ 4; Marion Decl. ¶ 9; Szollosi Decl. ¶ 9. The bill was revised to restore Habitat Montana’s funding to approximately \$30 million per biennium.

36. As a result of deliberation and compromise, SB 442 took its final form as a bill that balanced the interests of stakeholders and garnered exceptional bipartisan support from an overwhelming majority of lawmakers. Lang Decl. ¶ 5. Ultimately, 82 representatives and 48 senators voted in favor of SB 442. *Id.* The bill was passed on May 1, 2023, the penultimate day of the session. *Id.* ¶¶ 5–6.
37. The legislative process was careful and measured. What happened next was anything but. The bill was sent to enrolling, returned from enrolling, and vetoed in a matter of hours—highly unusual speed for processes that generally take days and even weeks. Decl. of Sen. Pat Flowers, ¶¶ 4–6 (June 6, 2023).
38. The Governor vetoed SB 442 on May 2, 2023, the final day of the legislative session. Lang Decl. ¶ 9.
39. The precise timing of the veto and method by which it was returned to the Senate are unclear. But it is clear what did not happen: the bill was not read over the rostrum, and the Senate was not apprised of the veto until after it adjourned *sine die*. Flowers Decl. ¶¶ 9–13; Lang Decl. ¶ 9. Because of the veto’s timing, the Legislature had no opportunity to exercise its constitutional prerogative of override.
40. Senator Lang wrote to the Secretary, requesting that she poll the Legislature. Lang Decl., Ex. A, Sen. Lang Letter to Sec. Jacobson (May 5, 2023). The Secretary’s legal counsel responded by email that because the Secretary had not received SB 442 and the Governor’s reasons for veto, she could take no action related to the bill. Lang Decl., Ex. B., A. James Email to M. Lang (May 8, 2023).

He recommended that further questions be directed to the Governor's Office. *Id.*

41. In the ensuing weeks, individuals and organizations, including Conservation Organizations and their members and supporters, sent letters to the Secretary and the Governor, calling on the Secretary to poll the Legislature and the Governor to return the bill to the Secretary. Marion Decl., Ex. A, C. Van Kley to Gov. Gianforte (May 10, 2023). Neither the Governor nor the Secretary took action. Marion Decl., Ex. B, A. Milanovich Email to C. Van Kley (May 10, 2023).
42. While the Governor may or may not have intended to time the veto to prevent an override, the subsequent failure to take further action is deliberate.
43. Absent correction, the veto of SB 442 and ensuing efforts to prevent the Legislature from exercising its constitutionally delegated override authority sets a dangerous precedent, which future governors can and will exploit to veto bills without fear of override. Because its chambers generally adjourn at different times, the Legislature remains in session every biennium after it may exercise its power of override. If the Governor's and Secretary's respective actions and lack of action with respect to SB 442 are allowed to stand, future governors may use the precedent to prevent essential, widely supported bills from going into effect without regard to the constitutional system of checks and balances.

CLAIMS FOR RELIEF

Count One

(Declaratory Relief)

44. Petitioners incorporate herein all the foregoing allegations as if set forth in full.

45. The Montana Constitution anticipates no circumstance in which the Legislature is unable to override a veto by a two-thirds majority. Article VI, Section 10 is clear—under all circumstances, a supermajority of each chamber may vote to override a veto and ensure a bill’s passage into law.
46. The Legislature passed SB 442 by overwhelming majorities in both chambers. The Legislature remains constitutionally entitled to an opportunity to override the Governor’s veto.
47. The Governor lacks the authority to time a veto to prevent an override.
48. The Governor’s veto of SB 442 was ineffective because it did not provide the Legislature any opportunity to override it. Unless immediate action is taken to return the bill and veto to the Secretary—allowing her the opportunity to poll the legislature pursuant to her constitutional obligation—the veto cannot stand.

Count Two

(Writ of Mandate)

49. Petitioners incorporate herein all the foregoing allegations as if set forth in full.
50. A writ of mandamus may be issued by any judge of the district court “to compel the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right . . . to which the party is entitled and from which the party is unlawfully precluded by the . . . person.” Section 27-26-102(1), MCA.
51. The application for writ is made upon affidavit. Conservation Organization applicants here are beneficially interested because the Constitution requires

that action be taken to restore a functional system of checks and balances.
Section 27-26-201, MCA.

52. The Constitution and implementing statutes impose a clear legal duty on the Governor to provide the Legislature with an opportunity to override his veto.
53. The Constitution and implementing statutes likewise impose a clear legal duty on the Secretary to poll the legislature for purposes of override and, ultimately, to determine whether SB 442 shall go into effect.
54. Conservation Organizations and others have demanded that the Governor and Secretary take action, and the Governor and Secretary have refused.
55. No plain, speedy, and adequate remedy exists in the ordinary course of law.

PRAYER FOR RELIEF

Wherefore, Conservation Organizations respectfully request that this Court:

1. Enter a declaration that the Governor's veto was ineffective and remains ineffective unless and until the Governor returns the bill and his veto letter to the Secretary to allow for a poll of the Legislature;
2. Grant a writ of mandate requiring the Governor to return the bill and his veto letter to the Secretary of State and requiring the Secretary to poll the Legislature;
3. Award costs and reasonable attorney's fees to Petitioners; and
4. Grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted this 7th day of June, 2023.

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